

FILLMORE RANCHES

IBLA 77-196

Decided June 1, 1977

Appeal from decision by administrative law judge dismissing with prejudice appeal of cancellation of grazing license.

Affirmed.

1. Grazing Permits and Licenses: Generally! ! Grazing Permits and Licenses: Administrative Law Judge! ! Grazing Permits and Licenses: Appeals! ! Grazing Permits and Licenses: Hearings

In an appeal before an administrative law judge of a decision adversely affecting the interests of a grazing licensee, upon the failure of the licensee to appear and to present his case, the administrative law judge may properly dismiss the licensee's grazing appeal with prejudice pursuant to 43 CFR 4.474(b).

2. Grazing Permits and Licenses: Base Property (Land): Ownership or Control! ! Grazing Permits and Licenses: Cancellation or Reduction

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

3. Grazing Permits and Licenses: Base Property (Land): Transfers

A timely transfer of grazing license privileges to new base property may be made only

while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

APPEARANCES: Ralph W. Baysinger, Scottsdale, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Fillmore Ranches (appellant), through its partner, Ralph W. Baysinger, has appealed from an order dated January 19, 1977, by Administrative Law Judge Michael L. Morehouse, dismissing with prejudice appellant's grazing appeal (No. UT-050! WSRA-2) from the cancellation of grazing license No. 3687 by the Bureau of Land Management (BLM) Area Manager, Richfield Grazing District, Fillmore, Utah.

On March 20, 1972, the BLM issued a grazing license to appellant which granted it a total of 71 animal unit months (AUMs) grazing privileges on Warm Springs, Meadow Springs, and Ephraim Sheep! Meadow (Exh. 1-3). On December 16, 1975, a deed was recorded by which appellant's owners conveyed some of its property to a third party (Exh. 2). The land transferred from appellant's ownership included the land which constituted the base property to which these grazing privileges were attached.

After becoming aware of this transfer, on April 7, 1976, the BLM issued a Show Cause Notice, holding the grazing license for cancellation, on the ground that 43 CFR 4115.2-1(e)(8)(i) provides that grazing privileges are automatically terminated upon sale of base property by the licensee. On April 9, 1976, Baysinger telephoned the BLM and asked if these grazing privileges could be transferred to other land still held by appellant. The BLM advised him that the privileges had been automatically lost as of the sale of the base property, and that they could only have been transferred to other property before the sale of this base property. On April 12, 1976, appellant filed with the BLM a letter which indicated that the cancellation of the grazing privileges was due to unfamiliarity with grazing regulations, and which urged the BLM to allow it to reestablish these privileges. On May 7, 1976, the BLM issued a notice of cancellation of these privileges by reason of appellant's failure to show sufficient cause why they should not be canceled. This notice stated that the cancellation was in accordance with 43 CFR 4115.2-1(e)(8)(i).

On June 2, 1976, appellant filed a letter protesting this cancellation and again requesting reinstatement of these grazing privileges. On October 14, 1976, pursuant to 43 CFR 4.470, a Notice of Hearing issued setting a date and place for a hearing before an administrative law judge in order to take testimony concerning

appellant's grazing appeal. The matter was set for hearing on December 1, 1976, in the Sevier County Courthouse, Richfield, Utah.

A hearing was convened at the time and place indicated in this notice, but appellant did not make an appearance. The BLM did appear, and presented evidence concerning the merits of its decision to cancel appellant's grazing privileges. On January 19, 1977, the administrative law judge issued an order dismissing appellant's grazing appeal with prejudice, pursuant to 43 CFR 4.474(b), on account of the failure to appear at the hearing to present its case. On February 9, 1977, appellant filed its notice of appeal to this Board of the dismissal of this grazing appeal.

[1] The rules of practice concerning appeals of grazing decisions to administrative law judges are set out in 43 CFR 4.470 et seq. 43 CFR 4.474(b), cited by the administrative law judge as the basis for dismissing appellant's grazing appeal with prejudice, provides in part as follows:

Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the administrative law judge, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. * * * [Emphasis added.]

Since appellant failed to present its case, and since the administrative law judge subsequently met the procedural requirement of issuing a written order setting forth the reasons for the dismissal has been met, this section clearly dictates that appellant's grazing appeal should have been dismissed with prejudice. In the letter constituting appellant's notice of appeal, appellant's agent states that he was not given sufficient notification of the hearing for his attorney to alter his schedule. This reason is no justification for appellant's failure to appear. Appellant might easily have obtained a continuance of these proceedings in order to have had the merits of his appeal heard. We conclude that the administrative law judge properly dismissed appellant's grazing appeal on account of its failure to appear at this hearing.

[2] In view of the appellant's failure to present a case at this hearing, it was unnecessary to, and the administrative law judge did not, consider the merits of the BLM's cancellation of appellant's grazing license. However, it is clear that

this cancellation was proper. 43 CFR 4115.2-1(e)(8) provides in part as follows:

If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that [exception inapplicable]. [Emphasis added.]

Loss of ownership or control of base property results automatically in the loss of grazing privileges attached thereto, in the absence of a timely application for transfer of these privileges to other qualifying base property. Charles Stewart, 26 IBLA 160, 162 (1976); James G. Brown, A-27635 (September 24, 1958), 65 I.D. 394. As discussed below, a timely application for transfer of grazing privileges from original base property to new base property can only be made while the original base property is within the ownership or control of the licensee. Appellant made no application to transfer its grazing privileges to other base property prior to December 16, 1975, the date of sale of the base property, when it lost ownership and control thereof. It is thus clear that appellant's grazing privileges terminated automatically as of the date of the transfer of the base property. We conclude that the BLM properly canceled appellant's grazing license.

[3] Appellant is not entitled now to transfer these grazing privileges to other base property, as he suggests in his notice of appeal. 43 CFR 4115.2-2(b) provides in part as follows:

Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect. (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1-1 * * *. [Emphasis added.]

Under the terms of this section, a timely transfer of grazing privileges to other base property may be made only while the original base property is within the ownership or control of the licensee. Stewart, supra at 162. Appellant lost both ownership and control of its base property in December 1975 when it deeded this land to a third party. Therefore, appellant may no longer transfer its grazing privileges to other base property.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge
(Concurring separately)

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

This case involves an appeal from the order of January 19, 1977, of Judge Morehouse, which dismissed appellant's appeal to him with prejudice because appellant failed to present his case pursuant to 43 CFR 4.474(b). No one appeared at the hearing on behalf of the appellant.

43 CFR 4.474(b) recites as follows:

(b) Unless the administrative law judge orders otherwise, the State Director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the administrative law judge, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the administrative law judge. [Emphasis supplied.]

The Judge ordered summary dismissal of the appeal. Thus the sole issue before the Board is the propriety of that summary dismissal. I would limit the decision to that issue. The main opinion properly affirms that summary dismissal, since no compelling explanation of the failure to present his case has been tendered by appellant. His excuse that he was not given sufficient notice of the hearing for his attorney to alter his schedule is patently unacceptable since the notice of hearing was issued October 14, 1976, served on October 20, 1976, and the hearing date set therein was December 1, 1976. Moreover, in a sense, the Judge's summary dismissal is an adjudication of grazing privileges. 43 CFR 4.478(b) provides that: "No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this title."

Frederick Fishman
Administrative Judge

